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May 21, 2007

Honorable Donovan Frank
United States District Court
District of Minnesota
738 Federal Building
316 North Robert Street
Saint Paul, Minnesota 55101Re: The America Channel, LLC v. Time Warner Cable Inc., et al.
Case No. 06-cv-2175 DWF/AJB

Dear Judge Frank:

I write to direct the Court's attention to the Supreme Court's decision today in *Bell Atlantic Corp. v. Twombly*, No. 05-1126 (S. Ct. May 21, 2006) (copy attached as Exhibit 1), which bears directly on the central question presented in defendants' motion to dismiss plaintiff's first amended complaint in the above-captioned matter: whether a claim under Section 1 of the Sherman Act can survive a motion to dismiss when it consists solely of allegations of parallel conduct coupled with conclusory allegations of conspiracy.

The Supreme Court reiterates in *Twombly* that parallel conduct may be "consistent with conspiracy, but [it is] just as much in line with a wide swath of rational and competitive business strategy unilaterally prompted by common perceptions of the market." (Slip Op. at 7.) Accordingly, "an allegation of parallel conduct and a bare assertion of conspiracy will not suffice." (*Id.* at 10; *see also id.* ("Without more, parallel

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conduct does not suggest conspiracy, and a conclusory allegation of agreement at some unidentified point does not supply facts adequate to show illegality.”.)

Respectfully submitted,

Jay Cohen

A large, stylized handwritten signature in black ink, which appears to be "Jay Cohen", is written over the typed name. A long horizontal line extends from the right side of the signature.

Enclosure

cc: All Counsel